

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

CENTRAL WASHINGTON GROWERS
ASSOCIATION, ET AL.,

Petitioners,

v.

CHELAN COUNTY,

Respondent.

Case No. 16-1-0002

FINAL DECISION AND ORDER

SYNOPSIS

Petitioners challenged Chelan County Resolution 2016-14 prohibiting marijuana or cannabis production, processing, and collective gardens and cooperatives in Chelan County (County). The Board concluded the Petitioners had failed to meet their burden to establish Resolution 2016-14 violates the Growth Management Act (GMA).

I. CHALLENGED CHELAN COUNTY RESOLUTION 2016-14

Resolution 2016-14 permanently prohibits the establishment, siting, location, permitting, licensing or operation of: (1) recreational marijuana or cannabis production and processing, and (2) medical marijuana or cannabis collective gardens and cooperatives. Resolution 2016-14 also declares all marijuana or cannabis production, processing, collective gardens and cooperatives as “public nuisances” and “nuisances per se.”¹

¹ Resolution 2016-14, (February 16, 2016) pp. 1-3.

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II. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board finds it has jurisdiction over subject matter of the petition pursuant to RCW 36.70A.280(1).

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.² This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the County is not in compliance with the GMA.³ The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.⁴

The scope of the Board’s review is limited to determining whether a county has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.⁵ The Board is directed to find compliance unless it determines that the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.⁶

IV. ANALYSIS AND DISCUSSION

Issue No. 1

Is Resolution 2016-14 inconsistent with the goals of the Growth Management Act, RCW 36.70A.020(5) & (6), specifically encouraging economic development and protecting property rights from arbitrary and discriminatory action?

² RCW 36.70A.320(1).
³ RCW 36.70A.320(2).
⁴ RCW 36.70A.280, RCW 36.70A.302.
⁵ RCW 36.70A.290(1).
⁶ RCW 36.70A.320(3). In order to find the County’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

1 **Applicable Law:**

2 **RCW 36.70A.020 Planning goals**

3 The following goals are adopted to guide the development and adoption of comprehensive
4 plans and development regulations . . . The following goals are not listed in order of priority
5 and shall be used exclusively for the purpose of guiding the development of comprehensive
6 plans and development regulations:

7 . . .
8 (5) Economic development. Encourage economic development throughout the state
9 that is consistent with adopted comprehensive plans, promote economic opportunity
10 for all citizens of this state, especially for unemployed and for disadvantaged
11 persons, promote the retention and expansion of existing businesses and recruitment
12 of new businesses, recognize regional differences impacting economic development
13 opportunities, and encourage growth in areas experiencing insufficient economic
14 growth, all within the capacities of the state's natural resources, public services, and
15 public facilities.

16 (6) Property rights. Private property shall not be taken for public use without just
17 compensation having been made. The property rights of landowners shall be
18 protected from arbitrary and discriminatory actions.

19 **Board Discussion**

20 Petitioners allege noncompliance with the "property rights" and "economic
21 development" planning goals in RCW 36.70A.020. Petitioners' allegations are not tied to
22 substantive "requirements" of the GMA.⁷ Thus, the narrow issue raised here is whether "the
23 development of comprehensive plans and development regulations" was **guided by**
24 planning goals 5 and 6.

25 **Property Rights**

26 The Growth Management Hearings Board (GMHB) has no subject matter jurisdiction
27 to hear and decide constitutional takings claims.

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29 ⁷ Although not raised as an issue in the present case, the Board notes that our Supreme Court recently
30 explained the difference between GMA planning goals and GMA substantive requirements: "*Nothing in this*
31 *plain language suggests that GMA goals impose substantive requirements on local governments . . . [we] have*
32 *never held that local governments are bound by these goals in addition to the enumerated requirements of the*
Act." *Whatcom County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 186 Wn.2d 648, 689-690 (2016). See also
Quadrant Corp. v. Hearings Bd., 154 Wn.2d 224, 245-247 (2005).

1 As to protecting property rights of landowners from discriminatory actions, Petitioners
2 have not adduced any facts showing discriminatory actions against a protected class of
3 landowners.

4 As to protecting property rights of landowners from arbitrary actions, Petitioners must
5 adduce facts showing that Resolution 2016-14 lacked any rational basis. The record shows
6 that marijuana is specifically prohibited by the federal Controlled Substances Act (CSA), 21
7 U.S.C. § 801 *et seq.* Further, the Chelan County Commissioners made a number of
8 Findings of Fact that Resolution 2016-14 was necessary to protect public health, public
9 safety, public welfare, and the quality of life in Chelan County. Chelan County declared
10 marijuana or cannabis production in Chelan County to be public nuisances and nuisances
11 per se.⁸ Under these facts showing the County's specific deliberations and considerations
12 of public health, safety, and welfare, Petitioners cannot satisfy their burden of proof to
13 demonstrate that Resolution 2016-14 violated GMA requirements due to arbitrary and
14 discriminatory actions.
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17 Economic Development

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19 As to the GMA planning goal to "encourage economic development" and "promote
20 economic opportunity" and "promote the retention and expansion of existing businesses and
21 recruitment of new businesses," Petitioners must adduce facts showing that Resolution
22 2016-14 failed to "encourage" and "promote" economic development and that these goals
23 did not **guide development** of Resolution 2016-14. The record shows that a ban on
24 cannabis production and processing will greatly harm the nascent cannabis sector of the
25 economy but the record contains evidence that the ban may help other economic sectors.⁹
26 Petitioners have failed to adduce evidence showing that Resolution 2016-14 was not guided
27 by the statutory goal to "encourage" and "promote" economic development.
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32 ⁸ Resolution 2016-14, (February 16, 2016) p. 5.

⁹ Resolution 2016-14, (February 16, 2016) pp. 1-3.

1 As to GMA planning goals 5 and 6 relating to property rights and economic
2 development, the Board finds and concludes Petitioners have failed to meet their burden of
3 proof to show Chelan County's Resolution 2016-14 violates the Growth Management Act.
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5 **Issue No. 2**

6 Is Resolution 2016-14 inconsistent under RCW 36.70A.130(1)(d) with the Chelan County
7 Comprehensive Plan, specifically the goals related to agricultural resource land and
8 economic development, which was adopted under, and is consistent with, the Growth
9 Management Act, RCW 36.70A.070(1) & (7)?

10 Under Issue 2, Petitioners failed to brief alleged violations of RCW 36.70A.070(1) &
11 (7) -- those unbriefed legal arguments are deemed abandoned.¹⁰ Also, the Board cannot
12 consider any arguments relating to RCW 36.70A.060 since this GMA section was not raised
13 as an issue in the Petition for Review.
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15 **Applicable Law:**

16 RCW 36.70A.130(1)(d): Any amendment of or revision to a comprehensive land use plan
17 shall conform to this chapter. Any amendment of or revision to development regulations
18 shall be consistent with and implement the comprehensive plan.
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20 **Board Discussion**

21 Petitioners allege that the development regulation amendments adopted by Chelan
22 County Resolution 2016-014 are not consistent with the below-listed goals and policies of
23 the Chelan County Comprehensive Plan.
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25 In GMA parlance, "consistency" means that no feature of a plan or regulation is
26 incompatible with any other feature of a plan or regulation. Consistency is indicative of a
27 capacity for orderly integration or operation with other elements in a system. Consistency
28 means that provisions are compatible, that one plan provision or regulation does not
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32 ¹⁰ "Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue." WAC 242-03-590(1).

preclude achievement of any other plan provision. Guidance on the GMA consistency requirement is set out in WAC 365-196-210(8) and WAC 365-196-500(1).¹¹

Economic Development Goals and Policies in Chelan County Comprehensive Plan:

GOAL ED 1: Expand the existing economic base to provide opportunities for economic growth in all communities in the county to ensure a healthy, stable and growing economy. Encourage efforts to diversify the existing economic base to focus on long- term sustainable economic development.

Policy ED 1.2: Support and encourage development that creates local re-investment funds and provides jobs in the local community.

GOAL ED 3: Accommodate and support efforts to diversify the agricultural economy.

Policy ED 3.1: Encourage value-added agricultural activities that strengthen and diversify the agricultural economy.

GOAL ED 6: Establish a positive climate for economic development.

Goal Rationale: Many factors make up a positive economic climate. Economic development requires policies of positive and predictable support and encouragement for private investment.

Policy ED 6.8: Seek to retain and support existing businesses and industries where consistent with the comprehensive plan.

Rationale: The retention and health of existing businesses and industries should be a key element of local economic development efforts.

GOAL ED 3: Promoting the availability of work [and] job security and stability.

The Board now analyzes whether Petitioners have adduced evidence demonstrating that Resolution 2016-14 is inconsistent with the above-quoted economic development goals and policies.

¹¹ See, e.g., *Five Mile Prairie Neighborhood Association v. Spokane County*, GMHB No. 12-1-0002 (Final Decision and Order, August 23, 2012), p. 10.

1 The Comprehensive Plan prescribes general county-wide goals to: expand the
2 County's economic base; provide opportunities for economic growth; ensure a healthy,
3 stable and growing economy; diversify the economic base to focus on long-term sustainable
4 economic development; and promote job security and stability.

5 Petitioners point to testimonial evidence from a manager stating that the cannabis
6 industry spends a lot of money locally and hires local employees. Also, an employee
7 testified before the Planning Commission that her job in the cannabis industry allows her to
8 work only one job rather than three and if she loses her job in cannabis, then she will lose
9 her home and medical provisions for her family.¹²

11 In adopting Resolution 2016-14, the County made findings that there would be
12 negative economic impacts to individuals, families, businesses, and real property values,
13 resulting from cannabis production and processing in Chelan County.¹³ Resolution 2016-14
14 provided a two-year phase out of lawfully established cannabis production, processing,
15 collective gardens or cooperatives to allow for amortization of the previous investments in
16 these cannabis operations that are now nonconforming uses.¹⁴

18 The Board notes that the Comprehensive Plan's goals and policies related to
19 economic development are generally applicable county-wide and industry-wide and do not
20 differentiate between distinct economic sectors of the State or County economy. The record
21 shows that Resolution 2016-14 will likely have adverse economic effects on some
22 individuals, families, and businesses in Chelan County but Resolution 2016-14 may at the
23 same time help avoid some negative economic impacts to other, non-cannabis businesses,
24 individuals, or families in the County. Certainly the County wants to strengthen and diversify
25 the agricultural economy but there is no county goal that prioritizes the cannabis sector over
26 other economic sectors.
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31 ¹² Petitioners' Prehearing Brief (March 10, 2017) p. 9.

32 ¹³ Resolution 2016-14, (February 16, 2016) pp. 1-3.

¹⁴ *Id.* p. 5.

1 Petitioners have failed to adduce evidence demonstrating that Resolution 2016-14
2 precludes, thwarts, or conflicts with the County's economic development goals and policies.

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4 Agricultural Industry Goals and Policies in Chelan County Comprehensive Plan:

5 **GOAL LU 9: Support the viability of agriculture and encourage the continued**
6 **use of rural and resource lands for agriculturally related land uses.**

7 Policy LU 9.1: Encourage air quality standards and policies that are not detrimental to
8 the agricultural industry.

9 Policy LU 9.2: The farmer shall have the right to farm, consistent with appropriate
10 local, state and federal requirements.

11 Policy LU 9.4: Chelan County will conserve agricultural lands for productive economic
12 use by identifying and designating agricultural resource lands where the principal and
13 preferred land use is commercial agricultural resource management.

14 Rationale: Activities in designated agricultural resource lands should be
15 discouraged that would limit or eliminate the ability to continue agricultural
16 operations.

17 Policy LU 9.6: Support efforts in the public and private sector to ensure the viability of
18 the agricultural industry.

19 Rationale: Strong agricultural markets and a supportive regulatory
20 environment are two of the necessary components of a healthy agricultural
21 industry. Attempts to secure these will be beneficial to the general welfare of
22 the County.

23 Policy LU 9.9: Regulatory opportunities should be developed to allow on-farm
24 enterprises to supplement farm income, improve the efficiency of farming and provide
25 employment for farm family members.

26 Rationale: Regulatory opportunities for limited enterprises such as direct
27 marketing of unprocessed and value added agricultural products and
28 agriculturally related small scale tourist operations can help supplement the
29 agricultural industry and maintain the primary use of agriculture.

30 **Goal LU 10: Conserve agricultural lands of long-term significance by**
31 **controlling encroachment of incompatible uses.**

1 Goal Rationale: Limiting the encroachment of incompatible uses will help to
2 insure that agricultural lands remain viable.

3 Policy LU 10.4: Non-farm development should provide buffers adjacent to agricultural
4 operations within or adjacent to designated resource lands.

5 Rationale: Buffers can reduce the potential for conflicts between agricultural
6 operations and other land uses.

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8 Policy LU 10.5: Land use activities within or adjacent to designated agricultural
9 resource lands should be sited and designed to avoid and mitigate potential conflicts
10 with agricultural practices.

11 Rationale: The avoidance and mitigation of potential land use conflicts will help
12 to insure that agricultural operations can remain viable and sustainable.

13 Policy LU 10.6: Development within or adjacent to designated agricultural resource
14 lands, including but not limited to plats, short plats, binding site plans, and planned
15 developments, shall be required to provide for mitigation, such as fencing, planting of
16 trees as buffers, landscaping, dust control, and appropriate spraying for pest control
17 or the removal of fruit bearing trees to address impacts to agricultural operations.

18 Rationale: The avoidance of conflicts will help maintain the ability of
19 agricultural operations to continue.

20 The Board now analyzes whether Petitioners have presented evidence
21 demonstrating that Resolution 2016-14 is inconsistent with the above-quoted agricultural
22 industry goals and policies.

23 The Comprehensive Plan prescribes general county-wide goals to: support the
24 viability of agriculture; encourage the use of rural and resource lands for agriculturally
25 related land uses; encourage air quality standards that are not detrimental to the agricultural
26 industry; protect the right to farm; conserve agricultural lands for productive economic use;
27 provide employment for farm family members; and conserve agricultural lands of long-term
28 significance by controlling encroachment of incompatible uses.
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1 In their briefing, Petitioners make only conclusory arguments that Resolution 2016-14
2 is inconsistent with Comprehensive Plan goals and policies. But Petitioners failed to identify
3 any evidence in the record demonstrating that Resolution 2016-14 precludes, thwarts, or
4 conflicts with specifically identified agricultural industry goals and policies. Further,
5 Petitioners' lengthy arguments about whether cannabis is or is not "agriculture" do not
6 constitute evidence of specific inconsistencies between Resolution 2016-14 and the
7 Comprehensive Plan.
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9 Chelan County made findings that the Resolution 2016-14 amendments "do not
10 adversely affect lands designated as resource lands of long-term commercial significance or
11 critical areas in ways that cannot be mitigated."¹⁵

12 The Board notes that the Comprehensive Plan's goals and policies related to the
13 agricultural industry are generally applicable county-wide and industry-wide and do not
14 differentiate between distinct agricultural sectors. The record shows that Resolution 2016-
15 14 will likely have adverse economic effects on cannabis farmers in Chelan County but
16 there is no evidence in the record showing a detrimental impact from Resolution 2016-14 as
17 to other agricultural sectors, or to the industry as a whole in the County.
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19 Petitioners have failed to cite evidence demonstrating that Resolution 2016-14
20 precludes, thwarts, or conflicts with the County's agricultural industry goals and policies.
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22 Finally, the record shows the County considered various environmental effects such
23 as unhealthy odor, noise, traffic, light, crime, irrigation water, and neighborhood esthetics
24 anticipated from cannabis production and processing in Chelan County.

25 The Board finds and concludes that Petitioners failed to satisfy their burden of proof
26 to demonstrate that Resolution 2016-14 was clearly erroneous and inconsistent with
27 comprehensive plan goals to promote economic development and the agricultural industry.
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32 ¹⁵ *Id.*

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V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board FINDS Chelan County is in compliance with the Growth Management Act, and this case is closed.

SO ORDERED this 19th day of May, 2017.

Raymond L. Paolella, Board Member

William Roehl, Board Member

Nina Carter, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.¹⁶

¹⁶ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

Appendix A: Procedural matters

On April 15, 2016, Central Washington Growers Association, San Juan Grown, LLC, American Best Supply, LLC, Andy Feil, d/b/a ATF Farms, BMB, LLC, Eva Enterprises, LLC, d/b/a Double Delicious, El Rey De La Kush, LLC, Nicholas S. Snyder, d/b/a Evergreen Production, Far West Enterprises, LLC, Five O 2, Jones Hartwig, LLC, Flying K Farms, LLC, Greenleaf Producers, LLC, Hanging Gardens of Central Washington, LLC, Manna Production, LLC, NCW Grow, LLC, Jeff E. Oberfelder, d/b/a Oberfelder Holdings, Plateau Growers, LLC, Sapphire Meadows, LLC, Seven Hills, LLC, Bruce A. Spencer, d/b/a Spencer Farm, Sysco Pancho's, LLC, Grandpa Bud, LLC, Mark Reimers, d/b/a High Standard Brand, Emerald City Green Machine, LLC, Copeland's Cannabis Farm, LLC, Lockhard & Anderson Enterprises, LLC, Black Market Music, LLC, Will T. Henson, d/b/a Icicle Valley Grow, Poorman Enterprises, LLC, Golden Gardens Company, LLC, Blewett Pass Farm, LLC, Navarre Coulee, LLC, Power Green Enterprises, LLC, and Shannara, LLC, (Petitioners) filed a petition for review. The petition was assigned Case No. 16-1-0002.

The parties jointly requested settlement extension of the case schedule in order to pursue settlement.¹⁷

Petitioner Grandpa Bud, LLC, voluntarily dismissed their claims against Chelan County and was dismissed as a petitioner of this case.¹⁸

The parties were notified of a change of case panel due to the retirement of Chuck Mosher. Nina Carter became the third panelist on the case.¹⁹

A prehearing conference was held telephonically on January 6, 2017. Petitioners appeared through their attorneys Daniel Appel and Dale Foreman. Respondent Chelan County appeared through its attorneys Susan Hinkle and April Hare.

¹⁷ Order Granting Settlement Extension (April 21, 2016). Order Granting Second Settlement Extension (July 1, 2016). Order Granting Third Settlement Extension (September 9, 2016).

¹⁸ Order of Dismissal of Grandpa Bud, LLC (November 15, 2016).

¹⁹ Notice of Change of Case Panel (December 22, 2016).

1 Petitioners filed a Motion to Supplement the record with the February 9, 2016, Chelan
2 County Commissioners' Public Meeting Transcript and Chelan County filed a Motion to
3 Dismiss Legal Issues 3 through 6, which were both granted.²⁰
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²⁰ Order on Motions (February 23, 2017).